

BEFORE THE LIQUOR CONTROL COMMISSION
OF THE STATE OF OREGON

In the Matter of the)	
Application for a)	
Dispenser Class A (DA))	
License by:)	
)	FINAL
Stanford T. and Janet L. Ochs)	FINDINGS OF FACT,
THE CHUCK WAGON)	CONCLUSIONS OF LAW,
Building No. 1)	AND ORDER
Sunriver Country Mall)	
Sunriver, Oregon 97702)	
- - - - -)	
Deschutes County)	

A hearing in the above matter was held on the 5th day of January, 1984 in Bend, Oregon, before Hearings Examiner Allen R. Scott. The record of the hearing remained open until the 21st day of February, 1984, for submission of further evidence by Applicants. The Applicants appeared in person and were represented by Paul Speck, Attorney at Law, Bend. The Commission was not represented by legal counsel.

On March 27, 1984 the Commission considered the record of the hearing, the Proposed Order of the Hearings Examiner, Exceptions to the Proposed Order of the Hearings Examiner, and applicable statutes and regulations. Pursuant to this review, the Commission enters the following:

FINDINGS OF FACT

1. Applicants are seeking a Dispenser Class A (DA) license at the CHUCK WAGON. They have operated the premises for eight years and have held a Restaurant license since 1980.

2. The Commission's staff has recommended that the application be denied based upon ORS 472.160(1) (not demanded by public interest or convenience because sales are seasonal), OAR 845-05-040(1), (2)(b) (not unique), OAR 845-05-040(2)(c) (county adequately served), OAR 845-05-040(3)(f) (lesser services, facilities), ORS 472.110(4) (quota).

3. Applicants' premises is located in the Country Mall area of Sunriver, a large resort approximately 15 miles south of Bend. Sunriver is a planned, integrated, self-contained community, with many services and amenities located on the resort grounds.

4. The Country Mall contains many shops and businesses.

5. It is Applicants' intention, if the application is granted, to expand the present premises into a vacant building next door. The expansion will create a lounge area. Seating for the remodeled premises will be as follows:

Deck	21
Restaurant	50
Lounge	38

6. If the license is granted, the premises will be open for breakfast on the weekends and for lunch and dinner seven days a week all year.

7. The breakfast menu will contain 11 omelets, three combination breakfasts, and three waffle breakfasts. The lunch menu will contain approximately 20 cold and hot sandwiches, salads, and eight hamburgers.

8. The dinner menu will contain the following dinners: New York steak, filet mignon, prime rib bones, teriyaki steak, steak strips, scampi, scallops, lobster, chicken, and teriyaki chicken. Three sandwiches will also be offered as well as six varieties of hamburger. The dinners are priced between \$6.50 and \$13.95.

9. In addition, Applicants will offer a lounge menu containing several burgers and sandwiches, as well as steak, chicken and prime rib dinners, and several side orders.

10. Sales at the premises have been as follows:

<u>MONTH</u>	<u>FOOD SALES</u>	<u>BEER & WINE</u>	<u>TOTAL</u>
<u>1983</u>			
Jan	\$ 8,695	\$1,143	\$ 9,838
Feb	10,201	936	11,137
Mar	14,568	1,546	16,114
Apr	10,469	1,381	11,850
May	15,687	1,801	17,488
Jun	20,667	1,925	22,562
Jul	30,676	2,457	33,133
Aug	38,519	2,801	41,320
Sep	22,938	2,450	25,388
Oct	14,189	1,380	15,569
Nov	11,294	1,012	12,306
Dec	15,310	1,325	16,635
Average	17,768	1,680	19,448

11. Applicants estimate that the addition of a DA license would cause the sales to rise to the following levels: food - \$34,224; liquor - \$14,666; total - \$48,850.

12. Average sales at existing dispenser outlets in Deschutes County have been as follows: food - \$31,816; alcoholic liquor - \$14,392; total - \$46,208.

13. The nearest DA outlet to Applicants' premises is the Sunriver Lodge, approximately one-quarter mile away. A DC premises, Casa De Ricardo, is located in the Sunriver Country Mall area. The owners of Casa De Ricardo presently have an application for a DA license pending before the Commission.

14. The next nearest dispenser outlets are in La Pine and Bend, both approximately 15 miles away.

15. The Applicants intend that the lounge will be relatively quiet and intimate. Entertainment, if any, would not involve dancing and loud music. Applicants intend that their lounge will contrast with the lounge at the Sunriver Lodge, which has dancing and louder live entertainment.

16. Applicants' premises will not have a separate banquet facility.

17. Sunriver has a permanent resident population of approximately 800. However, during peak times, there may be 15,000 visitors a day at the resort, including permanent residents, overnight visitors, and day visitors.

18. The Sunriver Country Mall is currently undergoing an expansion. The project involves creation of new commercial and retail space, an expansion of the grocery store into new quarters, the creation of a plaza, a new swimming pool, and the construction of 34 condominiums. These projects are either underway or will be started within the next few months.

19. A new direct road from Sunriver to the Mt. Bachelor ski area has recently been opened. This road reduces the driving distance from Sunriver to Mt. Bachelor from approximately 38 miles to approximately 17 miles. The new road has already increased winter business at Sunriver and is expected to substantially increase business in future winters.

20. There are 21 DA outlets within 20 miles of Applicants' premises. However, with the exception of the Sunriver Lodge, and the La Pine Inn (15 miles to the south), all are in the Bend area, 15 or more miles away. The highway between Sunriver and Bend is frequently treacherous in the winter and rather crowded during the remainder of the year.

21. The present master plan for Sunriver would permit restaurants only in the Mall area.

22. The Commission has approximately 60 dispenser outlets available for issuance. The Commission takes official notice that the population of the State has declined during the past year.

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Commission may refuse to license an applicant if it has reasonable grounds to believe that the granting of a license in the locality set out in the application is not demanded by public interest or convenience. ORS 472.160(1).

The staff's argument is that the "seasonality" of sales at Applicants' premises provides a basis for concluding that the application is not demanded by public interest or convenience.

Applicants' sales do vary widely between summer and winter. However, there is no specific criterion making seasonal fluctuation a basis for denying a DA application. Furthermore, it is not easy to see any logical connection between the mere fact of seasonality and a lack of public demand or convenience. The Commission therefore concludes that the seasonal fluctuation, by itself, does not provide a basis for denying the application.

2. Preference for issuance of a dispenser license will be given to applicants who provide dining service or atmosphere which is unique or substantially different in quality, quantity or type from that offered by other licensees within a 20-mile radius as indicated by menu, decor and amenities, entertainment or other characteristics. OAR 845-05-040(2)(b).

Applicants make no claim that their menu or dining atmosphere are unique within 20 miles. The Commission concludes that Applicants are not entitled to any preference under this criterion.

3. Preference in licensing may be given to applicants showing that the public is not being adequately served by dispenser outlets, if any, in the applicant's community as defined in OAR 845-05-030(1). Evidence that there is more than one dispenser license per 2,000 people in the applicant's city or county will be prima facie evidence that the applicant's community is being adequately served. OAR 845-05-040(2)(c).

The evidence establishes that Deschutes County has more than one dispenser outlet per 2,000 population. Given the isolated and rather self-contained nature of Sunriver, however, a

comparison with the County as a whole is not particularly meaningful. The evidence establishes that there is presently only one DA outlet in Sunriver, the Sunriver Lodge, and that Applicants' premises, because of its location in the Mall area and because of its different lounge atmosphere, will provide a service not provided by the Lodge. The Commission concludes that Applicants are entitled to some preference under this criterion.

4. Unfavorable consideration may be given to an applicant if the applicant's premises will provide lesser services, facilities and economic benefit to the area or to the general public, as indicated by actual or reasonably projected number of patrons served, seating capacity, banquet facilities, hours of operation, number of employees, extent of investment in facilities, amenities, or other such characteristics. Gross sales figures may be used as a basis for determining the number of patrons served. OAR 845-05-040(3)(f).

Applicants' present sales are substantially below the County average. Applicants' projections would place sales slightly above the County average. However these projections, the basis for which is unexplained and which forecast more than a doubling of sales, appear rather optimistic. Thus, although it is likely that sales will increase significantly if the license is granted, the Applicant has not established that they are likely to reach the County average. It may be argued, however, that the isolated location of Sunriver makes a comparison with the County less meaningful than it might otherwise be.

Applicants' premises will have no banquet facility. It will, however, be open for breakfast on weekends and for lunch and dinner every day.

The Commission concludes that although this criterion provides a basis for denying the application, it is outweighed by the positive factors noted in this order.

5. The Commission must exercise caution in the grant of the limited number of dispenser's licenses available to insure that these licenses are distributed in a manner to best serve the state's population. ORS 472.110(4).
6. Preference in licensing may be given to an applicant showing that applicant's premises are located in a rural unincorporated area or in an incorporated area with population of less than 25,000 or that applicant's premises are located in a rural unincorporated area or in an incorporated area with population of less than 25,000 and applicant's premises has seating capacity for 100 or fewer patrons. OAR 845-05-040(2)(d), (e).

The evidence establishes that Applicants' premises is located in a rural unincorporated area and that it has seating for approximately 100. The application is thus entitled to some preference under this criterion.

ULTIMATE CONCLUSIONS OF LAW

Although Applicants' premises will serve fewer patrons than do existing dispenser outlets in the area on the average, it is the Commission's conclusion that the license should nevertheless be granted because the Applicants will provide a needed additional dispenser outlet in the Sunriver area and

because Applicants are entitled to a preference because of their location in a rural area. OAR 845-05-040(2)(c), 845-05-040 (2)(d).

FINAL ORDER

It is hereby ordered that the application for a Dispenser Class A (DA) license by Stanford T. and Janet L. Ochs in the trade name the Chuck Wagon, Building No. 1, Sunriver Country Mall, Sunriver, Oregon 97702, be GRANTED, with issuance of the license subject to the following conditions:

1. That the premises be remodeled as proposed and be ready for operation within 90 days of the Commission's Final Order or that the grant of the license be withdrawn.
2. That the appropriate license fee be paid to the Commission prior to the issuance of the license.

It is further ordered that due notice of such action, stating the reasons therefor, be given as provided by law.

Dated this 29th day of March, 1984.



C. Dean Smith
Administrator
OREGON LIQUOR CONTROL COMMISSION

NOTICE: You are entitled to Judicial Review of this Order. Judicial Review may be obtained by filing a Petition for Review within 60 days from the service of this Order. Judicial Review is pursuant to the Provisions of ORS Chapter 183.